

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JAMES T. NORVELL,

Plaintiff,

v.

BNSF RAILWAY COMPANY,

Defendant.

CASE NO. C17-5683 BHS

ORDER

This matter comes before the Court on its own motion, following Defendant BNSF's objection to the Court's scheduling the trial in this matter over Zoom video. *See* Dkts. 146, 150, 151, and 152.

BNSF argues that the COVID-19 pandemic is "winding down" and that conducting the trial in-person would be consistent with Chief Judge Martinez's current General Orders, including No. 10-21. Dkt. 150 at 1. It recognizes that the matter is addressed to the Court's discretion, but argues that there must be "good cause shown" to require a Zoom trial over a party's objection. *Id.* at 3. (acknowledging that in *Bao Xuyen Le v. Reverend Dr. Martin Luther King, Jr. Cnty.*, 524 F. Supp. 3d 1113 (W.D. Wash. 2021), a court in this District ordered a Zoom trial over a party's objection). BNSF argues

1 that the COVID-19 landscape in March 2021, when *Le* was decided, was far different and
2 worse than it is now, in light of high vaccination rates. *Id.* It points out that criminal jury
3 trials (and some civil jury trials) are being held in person in the Western District. *Id.*
4 BNSF also points to sporadic reports of juror inattentiveness, lack of engagement and
5 interaction, and argues that it and it will be prejudiced if the trial proceeds over Zoom. *Id.*
6 at 4. It also argues without explanation that a Zoom trial will implicate its constitutional
7 right to a jury trial. *Id.* at 4–5.

8 Norvell argues that the Court has the ability to order a Zoom trial over a party’s
9 objection, and accurately cites cases from this District doing so. Dkt. 151 at 2–3 (citing,
10 *inter alia*, *Orn v. City of Tacoma*, No. 3:13-cv-05974-MJP, Dkt. 205 (W.D. Wash. Nov.
11 19, 2020)). He argues that Federal Rules of Civil Procedure 43(a) and 77(b) authorize the
12 Court to “permit testimony in open court by contemporaneous transmission from a
13 different location,” for good cause in compelling circumstances. *Id.* at 3 (citing *Le*, 524 F.
14 Supp. 3d at 1115).

15 COVID-19 is a compelling circumstance. While the disease’s transmission rate in
16 this District is not as bad as it has been at times over the past two years, the CDC’s
17 published information about transmission rates in counties comprising the Western
18 District of Washington at Tacoma’s jury pool demonstrate that the risk remains high.¹
19 This risk constitutes good cause for avoiding unnecessary physical contact among jurors
20 who are summoned to serve in Court.

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22 ¹ See Center for Disease Control and Prevention, *COVID Data Tracker*,
<https://covid.cdc.gov/covid-data-tracker/> (last visited Nov. 8, 2021).

1 BNSF's objection to Zoom trial is therefore OVERRULED. The jury trial in this
2 matter will proceed by Zoom as scheduled, beginning November 30, 2021.

3 IT IS SO ORDERED.

4 Dated this 9th day of November, 2021.

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7 BENJAMIN H. SETTLE
United States District Judge
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